IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 318 OF 2006

Shivkumar Bhagwatiprasad Gupta. ...Applicant
V/s.
The State of Maharashtra. ...Respondent

Shri Mahesh Jethmalani i/b. Dinesh Tiwari for Applicant.
Ms.Rajeshree M. Gadhavi, APP for the State.

CORAM : V.M. KANADE, J.

DATED : APRIL 24, 2006

P.C. :-

. This is the third application for bail filed by the applicant who was convicted by the Sessions Court and was sentenced to undergo 3 years of rigorous imprisonment for the alleged offence under Section 498A of the IPC and was sentenced to undergo 5 years of rigorous imprisonment for the offence punishable under Section 306 of the IPC. The applicant had applied for bail after his appeal was admitted. However, this Court by order dated 12th October, 2004 was pleased to reject his application. Thereafter, a second application for bail was preferred by him immediately within a short period of time. The said application is also rejected. When the second application was rejected, liberty was

granted to the applicant to apply for bail if the appeal is not heard within a particular period.

2. Learned Counsel for the applicant submits that the applicant is in jail since last almost one year nine months and has already undergone 1/3rd sentence of the total sentence which is imposed by the trial Court. He submits that therefore, on this ground, he may be released on bail.

3. The Apex Court has in catena of cases held that the accused has a statutory right to challenge the order passed by the Sessions Court and during this period, he is entitled to be released on bail if the appeal is not likely to be heard within a reasonable period of time, because if this is not done so, the appeal itself will be rendered infructuous. The Supreme Court in the case of **Kiran Kumar Vs. State of M.P. reported in (2001) 9 SCC 211** has observed in para 3 as under :-

> "3. This Court has held in **Bhagwan Rama Shinde Gosai Vs. State of Gujarat [(1999) 4 SCC 421 :**

> **1999 SCC (Cri) 553]** that when a person is convicted and sentenced to short-term imprisonment the normal rule is that when his appeal is pending the sentence should be suspended and rejection is only by way of exception and be put forward for such rejection. In such case also every endeavour should be made to have the appeal posted for early hearing and disposal. If the short-term sentence is allowed to run out during the pendency of the appeal, the appeal itself will become, for all practical purposes infructuous so far as the appellant is concerned. It does not mean that the appellate court should suspend the sentence, if its consequence would be a danger to the society or any other similar difficulties."

4. In view of the observations of the Supreme Court in the aforesaid case, the applicant is entitled to be released on bail though his earlier applications for bail have been rejected, particularly in view of the fact that the applicant has already undergone 19 months

of sentence. If he is not released on bail, his appeal is likely to become infractuous.

5. The applicant, under these circumstances, be released on bail in the sum of Rs.5000/- with one or two sureties in the like amount.

6. The applicant initially may furnish cash bail of Rs.5000/- and within two weeks furnish sureties as stated hereinabove.

. The application is disposed of.

(V.M. Kanade, J.)